

REMARKS

Claims 21 to 24 are added and therefore claims 11 to 24 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Claim 11 to 13 were rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent Application No. 2003/0220725 to Harter, JR. et al. ("Harter"). (*Paper Number 20080805, p.3*).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Still further, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it must also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the "problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem", Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998).

The Harter reference concerns a user discrimination control system controls functionality made available by a vehicle infotainment device by reducing functionality provided to the driver while allowing enhanced functionality to another passenger in the vehicle. The system includes a human machine interface located in a vehicle for allowing an occupant to interface with the infotainment device. A passenger detection sensor senses a condition indicative of a passenger other than the driver interfacing with the human machine interface. A video imaging system detects a driver distraction condition. A controller controls functions made available by the infotainment device by allowing one of first and second levels of functionality based on the sensed conditions. (See Harter, Abstract).

Accordingly, Harter does not describe or suggest the feature of “a controller unit operatively connected to the operator control, wherein the control unit influences operation of the vehicle system requested by the operator control; and an access detection device for determining which one of vehicle occupants is accessing the operator control, the vehicle occupants including at least one of a driver and a passive passenger;” as provided for in the context of claim 11.

In particular, the Office Action apparently interprets proximity sensors 32 and 34 as access detection device for detecting which one of vehicle occupants is accessing the operator control, in which the vehicle occupants includes a driver and a passenger. (*Paper Number 20080805, p.4*). It is respectfully submitted that even if sensors 32 and 34 detect a single individual’s interaction with the infotainment device, the infrared (IR) curtain 36 rests between the human machine interface of the infotainment device and the front passenger. Significantly, the IR curtain 36 only detects condition of a passenger (other than the driver) seated in the passenger seat attempting to interact with the human machine interface of the infotainment device 16. The sensor curtain 36 detects the presence of the passenger’s hand and/or arm breaking the IR curtain and generates an output signal indicative of the presence of the passenger attempting to interface with the infotainment system (Harter, [0022]).

The Harter reference is wholly silent as to the feature of an access detection device for determining which one of vehicle occupants is accessing the operator control, the vehicle occupants including at least one of a driver and a passive passenger. Even if Harter may refer to a IR curtain detecting a passenger’s motions, it is only detecting motion of a single passenger other than the driver, moreover, that passenger sits on the front passenger seat. In other words, Harter’s IR curtain and sensors 32 and 34 only detects whether one front passenger seat passenger is accessing the operator control and fails identically disclose nor

suggest any form of determination which one of a plurality of vehicle occupants is accessing the operator control, wherein the vehicle occupants include a driver and a passenger.

Independent from the foregoing, the Office Action conclusorily asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to integrate a system so closely associated with control system in the same controller. (*Paper Number 20080805, p.4*).

It is respectfully submitted that obviousness rejections without documentary evidence “should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration.” MPEP § 2144.03(A). The Harter reference does not teach the integrate a system so closely associated with control system in the same controller as the Office Action essentially admits. (*Paper Number 20080805, p. 4*).

In accordance with MPEP § 2144.03(C) and 37 CFR § 1.104(d) (2), it is respectfully submitted that an Examiner’s affidavit should be provided to support the obviousness rejections as to the asserted steps (or items) that were present within the art at the time of the presently claimed subject matter.

As further regards the obviousness rejections, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab’s invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected

claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that it simply does not describe the features discussed above of the rejected claims.

Consequently, claim 11 is allowable, as are the dependent claims 12 to 20, which depend from claim 11.

Claims 14 to 16 were rejected under 35 U.S.C. 103(a) as unpatentable over Harter in view of U.S. Patent No. 5,983,147 to Krumm. ("Krumm"). (*Paper Number 20080805, p.5*).

The Krumm reference refers to a system for determining when it is not safe to arm a vehicle airbag by storing representations of known situations as observed by a camera at a passenger seat; and comparing a representation of a camera output of the current situation to the stored representations to determine the known situation most closely represented by the current situation. In the preferred embodiment, the stored representations include the presence or absence of a person or infant seat in the front passenger seat of an automobile. (*Krumm, Abstract*). The Krumm reference does not disclose nor suggest any of the features described above as to claim 11, and does not disclose nor suggest that the deficiencies of Harter should be remedied or changed in any way to provide the presently claims subject matter. Accordingly, claims 14 to 16 are allowable for essentially the same reasons as claims 11.

Claims 17 to 20 were rejected under 35 U.S.C. 103(a) as unpatentable over Harter in view of U.S. Patent Application No. 2005/0131607 to Breed. ("Breed"). (*Paper Number 20080805, p.6*).

The Breed reference refers to an arrangement and method for obtaining information about a vehicle occupant in a compartment of the vehicle in which a light source is mounted in the vehicle, structured light is projected into an area of interest in the compartment, rays of light forming the structured light originating from the light source, reflected light is detected at an image sensor at a position different than the position from which the structured light is projected, and the reflected light is analyzed relative to the projected structured light to obtain information about the area of interest. The structured light is designed to appear as if it comes from a source of light (virtual or actual) which is at a position different than the position of the image sensor. (*Breed, Abstract*). The Breed reference does not disclose nor suggest any of the features described above as to claim 11, and does not disclose nor suggest that the deficiencies of Harter should be remedied or changed in any way to provide the presently claims subject matter. Accordingly, claims 17 to 20 are allowable for essentially the same reasons as claims 11.

New claims 21 to 24 do not add new matter and are supported by the present application including the specification. Claims 21 to 24 depend from claim 11 and are therefore allowable at least for the same reasons as claim 11. Additionally, the added claims include further features also not disclosed by the references as applied.

Accordingly, claims 11 to 24 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

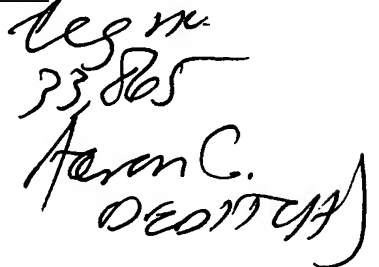
Respectfully submitted,
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DEPT 44